

IN THE SUPREME COURT FOR THE STATE OF ALASKA

THE ALASKA CENTER EDUCATION)	
FUND, ALASKA PUBLIC INTEREST)	
RESEARCH GROUP, and FLOYD)	
TOMKINS,)	
)	
Petitioners,)	
)	
v.)	
)	
GAIL FENUMIAI, in her official capacity as)	
the Director of the Alaska Division of)	
Elections, KEVIN MEYER, in his official)	
capacity as the Lieutenant Governor of)	
Alaska; and THE STATE OF ALASKA,)	
DIVISION OF ELECTIONS,)	
)	
Respondents.)	Supreme Court No. S-17908

Trial Court Case No. **3AN-20-08354 CI**

**RESPONSE TO EMERGENCY MOTION FOR EXPEDITED ORAL
ARGUMENT AND DECISION**

Respondents, State of Alaska, Division of Elections, Gail Fenumiai, and Kevin Meyer submit this response to Petitioners' motion for expedited consideration of their petition for review. Petitioners have needlessly imposed an expedited schedule on the superior court, this Court, and the State. Although they now characterize their claims as an as-applied challenge, Petitioners originally brought a facial challenge to Alaska's longstanding signature and identifier requirements for absentee-by-mail ballots. Petitioners allege that these requirements are unconstitutional unless the State creates a new process to notify voters of mistakes they made when returning their ballots and provides these voters some mechanism to cure their mistakes.

The absentee-by-mail requirements have been in place and consistently applied since at least 2003 and nothing about the upcoming election makes them burdensome. Indeed, these de minimus requirements do not “disenfranchise” voters; they merely ensure that voters are who they say they are. Petitioners can point to nothing except the increased quantity of absentee voting that distinguishes the upcoming election from any prior election during which these requirements applied. Because they assert the rights of individual voters, Petitioners could have objected to these requirements in any recent year in which one or more voters attempted to vote by mail and had their ballots rejected.¹ Nevertheless, Petitioners inexplicably waited until October 7, 2020 to demand relief before the 2020 general election.

Although the State will contend that granting the petition is unwarranted because of Petitioners’ unreasonable delay, it recognizes that, under the circumstances, the Court will likely at least consider the petition on an expedited basis. The State does, however, object to Petitioners’ proposed schedule requiring the State to submit its response by close of business Wednesday, October 21. The State received the petition at about 3:00 PM on Monday, October 19, more than four days after the superior court issued its

¹ To the extent that they rely on the increase in absentee turnout in 2020 due to the COVID-19 pandemic, that has been extensively reported since June and July and does not justify waiting until mid-October to file a claim. *See e.g.* James Brooks, “More Alaskans than ever have signed up to vote absentee by mail in this year’s primary election,” Anchorage Daily News (July 14, 2020) (available online at <https://www.adn.com/politics/2020/07/14/more-alaskans-than-ever-have-signed-up-to-vote-absentee-by-mail-in-this-years-primary-election/>). *See also* Transcript page 60 ¶24-page 61 ¶1 (“THE COURT: If it’s that critical, and of such a high public interest, why do you wait until several weeks before the election to file this case?”).

decision. In order to provide the State even approximately equal time—three days—the State proposes that its response be due by Noon on Thursday, October 22. The Court may then hold oral argument on Friday, October 23. As in another, recent elections-related matter in which the State was the petitioner, the State requests that the Court deny Petitioners’ request to file a reply.²

Petitioners demand that the parties complete briefing only seven days after the superior court ruled. It is not reasonable for them to take four of those days to prepare their petition, and a fifth day to prepare a reply, leaving the State only two days to prepare its only brief for this Court. The State, therefore, respectfully requests that the Court grant its proposed briefing schedule.

DATED October 20, 2020.

CLYDE “ED” SNIFFEN, JR.
ACTING ATTORNEY GENERAL

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² Order, Motion for Leave to File Reply, *State of Alaska et al. v. Arctic Village Council et al.*, S-17902 (Oct. 7, 2020).

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**ORDER
(RESPONSE TO EMERGENCY MOTION)**

Upon consideration of the response to Petitioners’ emergency motion for expedited oral argument and decision, the Court GRANTS the briefing schedule proposed by Respondents, State of Alaska, Division of Elections, Gail Fenumiai, and Kevin Meyer. The State’s response to the petition for review shall be due at Noon on Thursday, October 22. The Court also DENIES Petitioners’ request to file a reply.

Oral argument will occur on _____.

Supreme Court of the State of Alaska

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October 20, 2020
Date